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LOBBY LAW NEWEST 'CLEAN GOVERNMENT' TARGET

The federal lobbying law, unchanged since 1946, has become a major target of the "clean government" movement and its allies in Congress.

Within the past year, advocates of change have succeeded in revising election laws and persuading congressional committees to hold most of their sessions in public. Changing the lobby law may be even harder to accomplish.

There is general agreement that the 1946 Federal Lobbying Act (Title III of the 1946 Legislative Reorganization Act—PL 79-601) tells the public very little about the scope of lobbying in Washington. For one thing, an organization is not required to register unless it considers lobbying its "principal purpose." Any lobby group is free to consider its own work to be outside the requirement, as the National Association of Manufacturers did at one time, even though it maintained a permanent lobbying staff.

As interpreted by the Supreme Court in 1954, the lobbying law requires those who register to report only the expenses involved in their personal contacts with members of Congress. It does not include the money spent on grassroots lobbying campaigns aimed at persuading constituents around the country to contact the members. As a result, the quarterly reports lobbyists file tend to list the trivia of their work—cigars, lunches and cab fare—and leave out the salaries and other expenses large organizations commit to the job.

If somebody does manage to violate the mild strictures of the law, it is unlikely that he will be punished. The Secretary of the Senate and Clerk of the House collect lobby registrations and reports, but have no power to enforce the rules against violators. The Justice Department, which does have the power, only acts on complaints; it does not seek out violators. Since 1972 only five cases have been referred to Justice; there have been no indictments. *(Background on the lobby law, 1974 Weekly Report p. 1947)*

Honored in the Breach

"The 1946 law is more honored in the breach than anything else," said Sen. Robert T. Stafford (R Vt.), the Senate's leading advocate of a new lobby law. "I don't think anybody pays much attention to it."

Stafford and Sen. Edward M. Kennedy (D Mass.) have introduced a comprehensive new lobby bill (S 815) which would expand the definition of the word lobbyist and require those who register to keep and submit detailed records of their activity.

A similar bill (HR 15) has been introduced in the House by Rep. Tom Railsback (R Ill.), who says the existing law reaches only a fraction of those who lobby in Washington. "Many people who should be registered are not," he argued. "They may be obeying the law, but that's because the law was virtually decimated by the Supreme Court decision."

Under the Stafford bill, lobbyists no longer would be legally free to decide for themselves whether they wanted to file. There would be a complex, three-part definition of lobbying, and anyone who fit in any of the three categories would have to register.

A lobbyist would be someone who spends at least $250 per quarter or $500 per year on lobbying, or someone who receives at least that much for work of which lobbying is a substantial part, or someone who makes at least eight separate oral communications with members or employees of Congress or the executive branch in a quarter.

At the end of each quarter, the Stafford bill would require the lobbyist to file a public report listing each federal employee he sought to influence, identifying each conversation he had while lobbying, and providing the names of all persons whom he persuaded to engage in lobbying in his behalf.

The lobbyist would have to disclose his total income—not just his lobbying income—plus his total expenditures and an itemized list of all lobby expenditures of more than $10. Lobbying expenditures would include the money used for research, advertising, office space and mailings, rather than just the costs of person-to-person lobbying.

The Stafford bill has a strong gift disclosure provision. Lobbyists would be required to disclose all expenditures to congressional or federal employees which exceed $25. A group of smaller gifts made together also would have to be disclosed if their aggregate value was more than $100.

The Stafford measure would turn enforcement authority for the lobby law over to the new Federal Elections Commission, created in the 1974 campaign law. The commission would investigate alleged violations and bring civil actions to stop them. Stafford would punish ordinary violations with fines of up to $1,000, and willful violations with fines of up to $10,000 or imprisonment for up to two years. *(Elections commission story, Weekly Report p. 649)*

The Railsback bill differs slightly from S 815. There would be no oral communications test in the definition of lobbying, no requirement for itemizing lobbying expenditures of more than $10 a quarter and no requirement that the lobbyist identify the subject matter of each lobbying communication.

Both bills, however, would expand lobby coverage to contacts with the executive branch, which is not included in the 1946 act. The Railsback proposal is bolder on this issue than Stafford's, requiring executive branch employees to keep records of the lobbyists who contacted them and subjects they discussed.

Public Image

The sponsors of the different lobby bills differ on what they would accomplish. Stafford does not feel the privilege of lobbying is being abused under existing law or that Congress is dominated by lobbyists, but simply that changes are needed to boost public confidence.

"Whenever anything is done in private, even if it is justified, it creates the impression that something is wrong," Stafford said. "We may do quite a bit of good by

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dispelling people's suspicions. People will know, and when they know, conjecture of illegaility goes out the window."

Railsback feels much the same way. "I don't think lobbyists have an inordinate influence so much as they have an undisclosed influence. They're organized, and they're involved in virtually everything."

But others who advocate change believe there is more involved in the legislation than an attempt to reassure people that Congress is clean. "I wouldn't want to convince people that there are no abuses, because there are," said Dick Clark, who is Common Cause's lobbyist on the lobby law. Clark said the supporters of the Stafford bill deliberately were playing down the substantive effect the legislation might have on lobbying, and playing up its importance in boosting the public image of Congress.

Stafford and Railsback both insist that they do not intend to make lobbying more difficult, just more accountable. "We don't want to be punitive," said Railsback. "They have a right to petition and to be heard."

Rep. Walter Flowers (D Ala.), whose House Judiciary subcommittee probably will hold hearings on the issue later in the year, agrees that reducing public suspicion is the first priority.

"The general public has a perception of a sleazy type operation," he said, "with members being wined and dined in fine restaurants. That may happen in some state legislatures, but it's not common here.

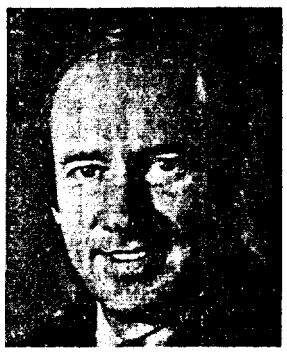
"We can do a great service in elevating the public knowledge about this, get some information out in a way that people can argue about things, and even increase the stature of the good lobbyist."

But Flowers, more than Stafford or Railsback, is concerned about what the legislation might do to the work of the lobbyist. "I don't want to sound the death-knell of lobbying as an art," said Flowers. "Legislation that's not carefully drawn could restrict communication between members and all kinds of business interests that need to be listened to."

Eight Times a Quarter

Flowers reflects the sentiments of many members of Congress, and some lobbyists, who accept the principle of changing the 1946 law but find fault with the specifics in the Railsback and Stafford bills.

Among the most controversial parts of the Stafford bill is the "oral communications" test for determining whether someone is a lobbyist. The language was included to bring in corporate executives, national labor officials, and others who spend no money for lobbying, do not consider it a substantial part of their work, but still spend considerable time on the telephone with influential members of Congress.



"I don't think lobbyists have an inordinate influence so much as they have an undisclosed influence. They're organized, and they're involved in ...everything."

—Rep. Tom Railsback (R Ill.)

During the markup of an energy tax bill in the House Ways and Means Committee, for example, Henry Ford of the Ford Motor Company and Lynn Townsend, board chairman of the Chrysler Corporation, both lobbied committee members. Under existing law, they are not required to register. Under the Stafford bill, if they made eight such calls to Congress or the executive branch during one quarter of the year, they would be lobbyists. *(Energy tax bill, Weekly Report p. 1063)*

The oral communications test raises some difficult questions. Stafford would count only those communications made in an effort to influence the policy-making process. But defining those communications is difficult. If a labor union official pays a social call on a committee staffer to keep up his contacts with the committee, is he lobbying? If a group of Illinois teachers chats with eight members of the state's House delegation in separate conversations at a Capitol reception, should they have to register as lobbyists? If the mayor of an Alabama town telephones his representative repeatedly during a period in which Congress is deciding whether or not to close the town's army base, should he have to register?

These questions bother some members of Congress, especially because lobby registrations have no termination date. Once registered, a lobbyist is carried on the books forever, even if the lobbying for which he registered took place during a brief period many years ago.

Railsback's bill does not include the oral communications test. He would include only those spending or receiving $250 in a quarter or $500 in a year for the purpose of lobbying. The income would not have to be received directly for lobbying; a person would have to file if the time he spent on lobbying was worth $250 a quarter or $500 a year as a prorated portion of his salary. Given the salaries most Washington lobbyists earn, this definition would include virtually everyone who did an hour or two of lobbying during a quarter.

More Than Just Talk

For most prominent lobbyists, however, the question of definition is more or less abstract. They are already registered. What worries them most about the Stafford and Railsback bills is the information they would have to provide.

The annual lobby spending reports, which currently mean little because they exempt indirect lobbying, would take on new significance. Organizations which lobby would have to report the money they spend on legislative research, magazines and newsletters, speaking tours and letter-writing campaigns. Registered lobbyists would have to estimate the proportion of their work which qualified as lobbying, and include that proportion of their salary in their organization's report.

Many lobbyists complain that any such attempt to identify the exact amount a group spends for lobbying is impossible. Charls Walker, deputy secretary of the treasury in the Nixon administration and now a leading private lobbyist, said the lobbying his firm does for clients is inseparable from the research and writing that become part of the same fee. "To include all the millions of dollars large organizations spend for various purposes is just bananas."

Even more critical was Milton A. Smith, general counsel to the U.S. Chamber of Commerce, the organization which has been most active in opposing the strong lobbying bills.

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Stafford Bill: Eight Phone Calls or a Big Turkey

During hearings in the Senate Government Operations Committee on S 815, Sens. Robert T. Stafford (R Vt.) and Edward M. Kennedy (D Mass.) offered some examples of the way their proposed new law would affect lobbyists. Following are the examples they chose:

1. An officer of an organization makes a single call to a Senator before a vote on a crucial issue. The officer is not required to register as a lobbyist himself since he meets none of the three tests (income, expenditure, communications). But the organization itself would presumably meet the expenditure or communication test because of its related lobbying activities, and the officer's phone call would have to be included in the organization's lobbying report. Thus, the lobbying is reported, but the officer is not burdened himself with the requirements of compliance.

2. The officer of an organization calls the ten members of his State's Congressional delegation before a crucial vote on a bill. The officer must register as a lobbyist himself, because he meets the "eight communications per calendar quarter" test.

3. The officer writes letters to the ten members of his State's Congressional delegation before a crucial vote on a bill. The officer is not required to register as a lobbyist, since the communications in the "eight communication" test must be oral, not written.

4. The officer meets with the ten members of his State's Congressional delegation. The officer is not required to register as a lobbyist; the communications in the "eight communications" test must take place on separate occasions.

5. Five hundred members of a national organization come to Washington for a day-long conference. The members visit Capitol Hill to urge support of a pending bill. Some members see staff representatives of eight Senators; others see a smaller number. Those who make eight or more contacts would technically be required to register. But the organization could obtain an exemption for its members from the Federal Election Commission, and would be required only to include these lobbying activities in the organization's own report.

6. An organization hires Mr. A as its Washington representative for a $10,000 a year retainer. Approximately one-tenth of Mr. A's job for the organization involves lobbying; the remainder involves private activities of the organization, unrelated to lobbying. Mr. A must register as a lobbyist, because he meets the "income" test (he is paid more than $250 a quarter for his employment and a "substantial" part of his job involves lobbying). Presumably, Mr. A would also meet the "communication" test by making eight or more lobbying communications per quarter.

7. Gifts:

a. Lobbyist A delivers a $30 holiday turkey to Senator X. The gift must be included in the lobbyist's quarterly reports.

b. Lobbyist B delivers a $20 tie clip to each of four Congressmen. The gifts need not be reported. If he delivers six clips, he meets the $100 test and the gifts must be reported.

c. Lobbyist organization C allows Senator A to ride in its private airplane to his home state. If the equivalent commercial value of the trip is more than $25, the trip must be reported.

d. Lobbyist D gives $200 to Congressman Y's re-election campaign. The contribution must be reported in Mr. D's lobbying reports, in addition to whatever reporting requirements are applicable under the Federal election laws.

"Administratively, for an organization like ours, it would be a nightmare," said Smith. "Each action we took would have to be assessed to determine whether or not it affected the policy-making process."

In the early 1960s, the Internal Revenue Service undertook an audit to determine just what percentage of the Chamber's work involved lobbying. The eventual answer—after a three-year investigation—was 37 per cent. Smith said it would require another investigation of that magnitude and that much inconvenience to comply with the reports of lobby spending that would be required under the Stafford and Railsback bills.

In the end, Smith argued, the public would be given a spending figure with little relationship to the actual influence of the lobby groups involved. "It's a hoax and a fallacy to think that figures showing how much someone might spend will show who has the most influence on legislation." He cited the example of the Consumer Federation of America, which he said spends little money but swings considerable weight.

Smith also was critical of Common Cause, which makes a practice of reporting all salaries and expenditures which are in any way connected with lobbying, even though the law requires only reporting of direct lobbying.

In 1973, for example, Common Cause reported spending $934,835 for lobbying, more than twice as much as any other organization, including some with much larger lobbying staffs.

Smith feels it is a bit self-righteous for any group to go beyond legal requirements and then chide others for merely complying with the law. "Not only are they not required to report those expenditures," Smith said, "but they may be committing perjury," since the law asks for direct lobbying expenses only.

"Whenever anything is done in private, even if it is justified, it creates the impression that something is wrong."

—Sen. Robert T. Stafford (R Vt.)

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"It's a hoax and a fallacy to think that figures showing how much someone might spend will show who has the most influence on legislation."

—Milton A. Smith, U.S. Chamber of Commerce

Logs and Paper

Most lobbyists are equally opposed to the provisions in the Stafford and Railsback bills which would require them to report on each contact they had with a member or employee of Congress or an executive branch official.

"It would tie me up in paperwork because of social relations," Walker complained. "I've been around this town 14 years. I could be tripped up by forgetting to log a joke I make as I run into a congressman in a hallway.... If I play golf with a member of Congress, and I pay the green fees, is that lobbying? I have a lot of friends up there."

Kenneth Meiklejohn, a veteran lobbyist for the AFL-CIO, was equally skeptical. "We wouldn't object to a certain amount more detail in record-keeping," he said. "But you can kill lobbying with too many burdensome restrictions.... The trouble with this bill is that it was written by a bunch of lawyers who keep logs for their time so they can charge their clients." Meiklejohn said the paperwork requirements of logging each conversation he held would prevent him from doing much lobbying.

Meiklejohn criticized Common Cause for fostering the impression that all its lobbying was done in public view. "Common Cause lobbies in private," he said, "and they're not making those contacts public right now. They'd like people to think they weren't doing this. But you can't be much of a lobbyist if you don't establish relationships with people on Capitol Hill, so you can contact them when you need them."

Clark of Common Cause said that he did not keep formal records of his own lobbying. "I log it mentally," he said. "If I were required to make a log of it, I would.... I have yet to meet a lobbyist who doesn't keep a record of his expenses."

Clark argued that most lobbyists would find it little extra trouble to expand their expense records into logs of their encounters with those who are being lobbied.

Rep. Flowers was not so sure, however, that logging would be that easy. "I've got an open mind on this logging," he said, "but it sort of boggles my open mind.... You end up with record-keeping becoming an end rather than a means."

Clark's answer was that a detailed record-keeping requirement on all contacts, even telephone contacts, would be the only way to keep track of lobbying. "Not all the labor lobbyists are visible," he said. "Andrew Biemiller of the AFL-CIO [and its chief legislative lobbyist] isn't visible on Capitol Hill. He does his lobbying privately, by phone, because he has the clout. That's why the oral contact provision is in there."

According to Clark, lobbyists do not make innocent contacts with Congress or the executive branch. They meet people for a purpose and ought to be willing to keep records on it. "The job description of a lobbyist is not nine-to-five," he argued. "As a lobbyist, I make receptions and parties. There is no such thing as a social contact."

Railsback's bill would carry logging an additional step, requiring executive branch employees over the GS-14 level to keep records of all conversations on matters of policy, including brief summaries of what was said.

During a hearing on the bill May 15, Sen. Charles H. Percy (R Ill.) asked Railsback why he would not place the same record-keeping requirement on members of Congress that he was asking of the executive branch.

"What's good for the goose is good for the gander," Percy said. "I would be reluctant to propose anything for the executive branch that I would be unwilling to impose on Congress." Railsback said he personally would not object to logging his own activities, but that he did not think adding such a requirement would do the bill very much good on the House floor.

A further problem for lobbyists is the requirement in both the Railsback and Stafford bills that a lobbyist disclose his total income, not just the income he makes from lobbying. "I make as much from speaking engagements and writing as I do from lobbying," said Walker. "Do I have to disclose that? What Carnegie-Mellon pays me for a series of lectures is nobody's business but mine and Carnegie-Mellon's."

Milder Suggestions

The Stafford and Railsback bills are not the only alternatives. Rep. Melvin Price (D Ill.), a former chairman of the House Standards of Official Conduct Committee and current chairman of Armed Services, has introduced a less stringent bill (HR 44). It would include anyone who makes a direct communication to influence legislation on any six days during a half-year period, or under certain circumstances solicits others to make such a communication, or is involved in the publication of printed material which solicits people to make a direct communication.

Lobbyists would have to report all spending for communications covered in the bill. But there would be no logging requirement. Enforcement powers would be given to the General Accounting Office, the investigative arm of Congress, rather than to the Federal Elections Commission or the clerk of the House and secretary of the Senate.

Still milder is a bill (HR 1112) introduced by Rep. Olin E. Teague (D Texas). It would expand the definition of lobbyist to include anyone who lobbies for pay on any six days within a half-year period, or any salaried employee who lobbies for his employer on the same piece of legislation during six days in a half-year. There would be no coverage of indirect lobbying, except for paid advertisements in the media. Logging would not be required. The secretary of the Senate and clerk of the House would administer the law, as they do under existing law.

The Chamber of Commerce considers the Teague bill the only one it could support, if in fact any is needed. Common Cause considers it far too weak.

Outlook

The sponsors of change are optimistic that there will be some action before the end of the year. The Senate Government Operations Committee held three days of hearings in

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May, with Kennedy and Stafford appearing in behalf of the Stafford bill and the Chamber of Commerce, the AFL-CIO and the National Association of Manufacturers speaking against it.

The chairman of Government Operations, Sen. Abraham Ribicoff (D Conn.), and the committee's ranking Republican, Percy of Illinois, both favor the Stafford bill. "I'm satisfied that Ribicoff and Percy are not just doing this on a pro-forma basis," Stafford said. "They are both co-sponsors, and in my judgment they are committed to getting it out of committee."

Prospects in the House are more questionable, complicated by a dispute between the Judiciary Committee and the Standards of Official Conduct Committee over which one should write the legislation. Flowers would like to begin hearings in his Judiciary subcommittee, but does not want to begin until the jurisdictional dispute is settled.

As it stands now, neither committee could report a bill by itself. "Both committees have to act, or you can't get a bill out," Flowers explained. "It's a very stilted process." The two committees are far apart ideologically—Judiciary being liberal and the ethics committee conservative—and the choice of jurisdiction could determine the eventual shape of the bill reported. Flowers has asked the House Rules Committee to send the legislation to one place or the other.

Paper Power

Thanks to lobbying by Common Cause, Railsback's bill already has 147 co-sponsors in the House, and Stafford's has 20 in the Senate. The real problem lies outside Congress. Other than Common Cause, no lobbying organization has come out publicly in favor of legislation as strong as the Stafford or Railsback bills, even including the League of Women Voters and the Ralph Nader organization.

"Common Cause called and tried to con me into going to a meeting," said Lesley Gerould of the League of Women Voters. "I told them we'd probably be opposed." She said the legislation would create too much paperwork and would discriminate against poorly financed lobby groups who could not afford enough staff to process the paper.

To attract the outside support necessary to pass the legislation, substantial changes will be necessary. "It would be most difficult to pass it with labor opposition," Clark admitted, "or with opposition of other public interest groups."

Since the bill has so many separate parts, there are broad opportunities for modification. The threshold of expenditures could be raised, making it unnecessary for some low-spending lobbyists to register. The "oral communications" test in the Stafford bill could be thrown out. Social contacts could be exempted from the reporting requirements. Or the relatively stiff enforcement provisions could be watered down.

A bill without burdensome logging requirements might neutralize the opposition of the AFL-CIO. "Nobody's saying there shouldn't be a bill," argued Meiklejohn. "The loopholes in the present law certainly should be closed. We wouldn't object to a certain amount more record-keeping. It would depend on what those details were."

Even if the bills are softened by compromise, however, there still will be complaints that its sponsors have too much faith in the power of paper to solve a human problem.

"It would be a tremendous burden on the honest, hard-working guy," said Walker. "And as is the nature of man, some people would find a way to get around it."

"I wouldn't want to convince people that there are no abuses, because there are."

—Dick Clark,
Common Cause lobbyist

Flowers thought that made sense. "When you get down to it," he said, "it's going to depend on how good people are. You can make all the rules in the world, and the lawbreakers are going to bend them to their own purposes."

—By Alan Ehrenhalt

Mr. Koob and the Fig Bar

Robert L. Koob is trying to save the fig bar.

Koob is the Washington lobbyist for the Biscuit and Cracker Manufacturers Association, 13 of whose member companies produce the bars for sale at groceries and candy counters.

Fig bars are not selling very well these days. The California fig paste used to make them has become scarce because the fig farmers have turned to alfalfa or sold out to suburban developers. That has forced the cookie makers to depend on imported fig paste from Turkey, Spain and Portugal.

But there is a 5-cent tariff on each pound of fig paste the manufacturers import, and the cookie companies say this tax has forced up the price of the fig bars to the point where people are reluctant to buy them.

So the companies have hired Koob to lobby Congress for an end to the tariff. "As these products are put on the shelves, they don't meet the competition, and they don't sell," Koob explained in an interview.

The likely targets of the fig lobby are members of the House Ways and Means Committee and the Senate Finance Committee, which would have to approve any of the tax changes. Koob is hoping to have a bill introduced in the Ways and Means Trade Subcommittee, chaired by Rep. William J. Green (D Pa.).

A fig bar and a fig newton are not the same thing. Fig newton is the Nabisco company's trade name for its basic fig cookie, which sold for 89 cents a pound on a recent day in a Washington grocery. These fig newtons are believed to be the largest selling of the fig bars. The Lance and Sunshine baking companies are among the other major producers.

Koob, while arguing the economic logic of ending the tariff, also notes the role of the fig bar as a tradition among American cookie eaters. "It's one of the most stable products the biscuit companies make," he said. "It's one of the real old cookies we have known from generations past."

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